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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 462

**GERMANTOWN TRUST COMPANY, TRUSTEE OF
THE GERMANTOWN TRUST COMPANY BOND
INVESTMENT FUND, PETITIONER,**

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 13, 1939.

CERTIORARI GRANTED NOVEMBER 13, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 462

GERMANTOWN TRUST COMPANY, TRUSTEE OF
THE GERMANTOWN TRUST COMPANY BOND
INVESTMENT FUND, PETITIONER,

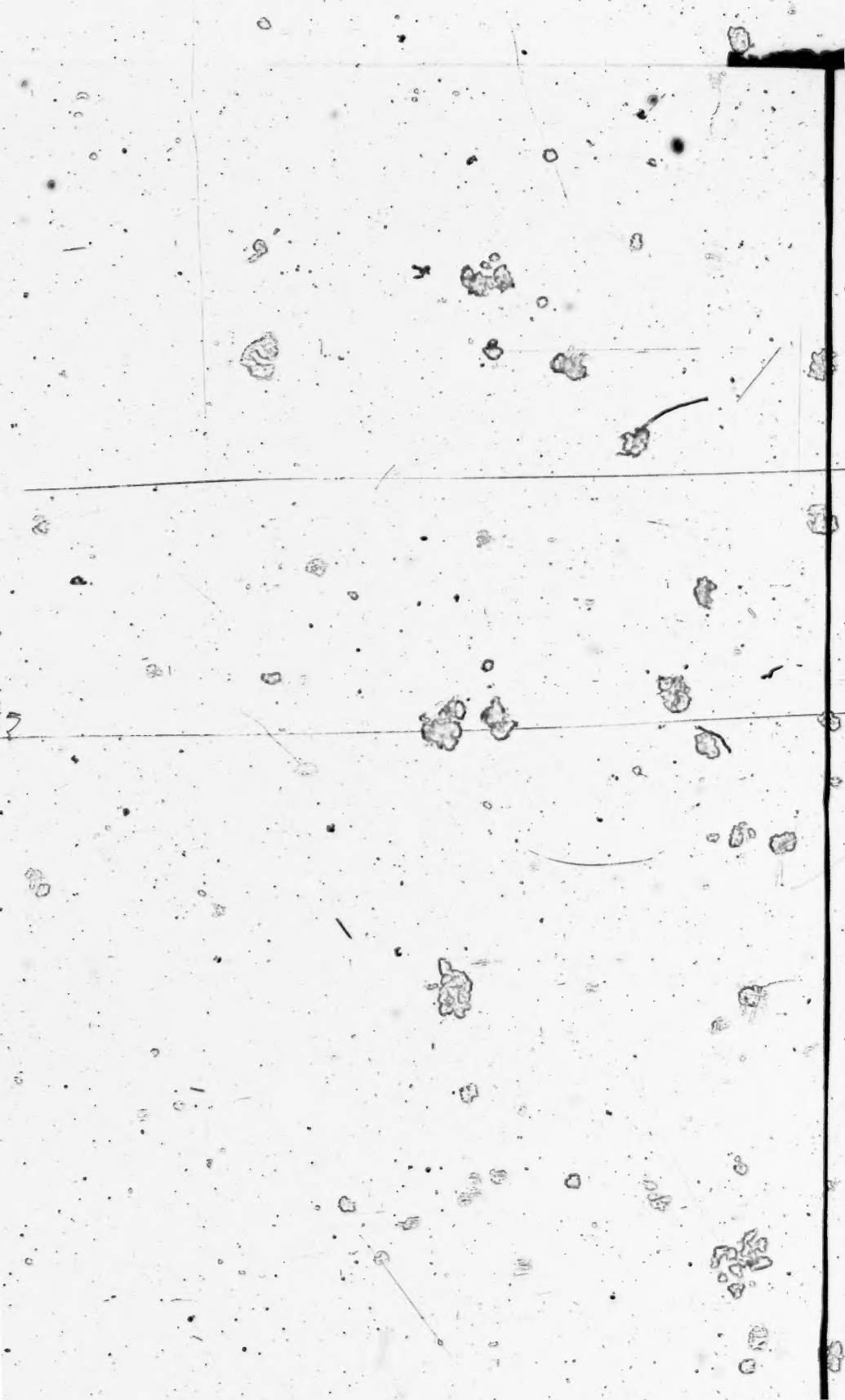
vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

INDEX.

	Page
Proceedings before United States Board of Tax Appeals.....	1
Docket entries	1
Petition	4
Exhibit "A"—Notice of deficiency	8
Answer	12
Petitioner's reply	14
Memorandum opinion, Murdock, M.	16
Decision	18
Petition for review and assignments of error.....	19
Notices of filing petition for review.....	24
Stipulation of facts.....	29
Exhibit "A"—Germantown Trust Company Bond Invest- ment Fund Agreement	30
Order from United States Circuit Court of Appeals, Third Cir- cuit re transmission of copies of Exhibits "D" and "E" of stipulation of facts as physical exhibits.....	44
Praecipe for record	45
Certificate of clerk	47
Proceedings in U. S. C. C. A., Third Circuit.....	48
Minute entry of hearing	48
Opinion, Biddle, J.	48
Judgment	52
Exhibit "D" of stipulation of facts—Fiduciary return of income for calendar year 1932.....	53-A
Exhibit "E" of stipulation of facts—Corporation income tax return for calendar year 1932.....	53-C
Clerk's certificate	54
Order allowing certiorari.....	54



Docket Entries

1

**Before the
UNITED STATES BOARD OF TAX APPEALS**

Docket No. 89166

**GERMANTOWN TRUST COMPANY, TRUSTEE
OF THE GERMANTOWN TRUST COMPANY
BOND INVESTMENT FUND,**

Petitioner,

vs.

**COMMISSIONER OF INTERNAL REVENUE,
*Respondent.***

Appearances:

**For Taxpayer: Paul F. Myers, Esq., Martin W.
Meyer, Esq., Harold Evans, Esq.**

For Com'r: C. R. Marshall, Esq.

7/27/38 Transferred to Mr. Murdock

DOCKET ENTRIES

1937

May 22—Petition received and filed. Taxpayer notified. (Fee paid).

May 24—Copy of petition served on General Counsel.

Docket Entries

June 19—Answer filed by General Counsel.

June 24—Copy of answer served on taxpayer.

July 26—Reply to answer filed by taxpayer. 7/26/37
copy served on General Counsel.

Nov. 30—Notice issued placing proceeding on
Wash. D. C. Calendar.

1938

Mar. 17—Hearing set 4/28/38.

Apr. 28—Hearing had before Mr. Black on merits.
Submitted. Stipulation of facts filed. Briefs as
per rules. *

May 2—Transcript of hearing of April 28, 1938
filed.

May 27—Brief filed by taxpayer. 5/28/38 copy
served on General Counsel.

June 23—Reply brief filed by General Counsel.

July 12—Reply brief filed by taxpayer. 7/12/38 copy
served on General Counsel.

Aug. 24—Memorandum opinion rendered, John E.
Murdock, Div. 3. Decision will be entered for
the petitioner.

Aug. 26—Decision entered, J. E. Murdock, Div. 3.

Nov. 17—Petition for review by United States Cir-
cuit Court of Appeals, Third Circuit, with as-
signments of error filed by General Counsel.

Dec. 1—Proof of service filed by General Counsel.

Nov. 17—Petition for review by United States Court
of Appeals, District of Columbia, with assign-
ments of error filed by General Counsel.

Docket Entries

3

Dec. 1—Proof of service filed by General Counsel.

Dec. 3—Affidavit of service of petition for Review (Dist. of Columbia) (2) attorney & petitioner.

Dec. 3—Affidavit of service of petition for review filed (Third Circuit) (2) attorney and petitioner.

1939

Jan. 12—Motion for extension of time to 2/15/39 to transmit the record filed by General Counsel. (Dist. of Columbia).

Jan. 12—Motion for extension of time to 2/15/39 to transmit the record filed by General Counsel. (Third Circuit).

Jan. 12—Order enlarging time to 2/15/39 to transmit the record entered. (Dist. of Columbia).

Jan. 12—Order enlarging time to 2/15/39 to transmit the record entered. (Third Circuit).

Jan. 18—Certified copy of order from third circuit re transmission of copies of Exhibits "D" and page 1 of Exhibit "E" as physical exhibits and a copy of third order filed.

Jan. 21—Praecipe of record filed by General Counsel, with proof of service thereon.

4

Petition

PETITION

(Filed May 22, 1937)

~~2~~

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:B 3 LS 90 D) dated February 27, 1937, and as a basis of its proceedings alleges as follows:

1. Petitioner is a fiduciary, with its principal office at Germantown and Cheltenham Avenues, Philadelphia, Pennsylvania.

2. The notice of the deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on February 27, 1937.

3. The taxes in question are income taxes for the calendar year 1932 and in the amount of Three Thousand Six Hundred Eighty-Six Dollars (\$3,686), all of which is in controversy.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in determining a deficiency for 1932 income taxes in view of the fact that the period for the assessment of such taxes had already expired.

(b) The Commissioner further erred in holding that the petitioner was operating as a corporation during 1932.

(c) The Commissioner further erred in failing

to hold that the petitioner was operating as a trust during 1932.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner filed a fiduciary return for the year 1932, on or before March 15, 1933, and the said return has been duly audited and approved by the Bureau of Internal Revenue.

(b) The Commissioner did not determine any deficiency in respect of such tax until February 27, 1937, at which time the statutory period for the assessment of income taxes had expired.

(c) The taxpayer believes that the individual beneficiaries of the said trust fund have regularly included in their individual income tax returns their share of the income of the said fund and have duly paid income taxes thereon.

(d) The Germantown Trust Company Bond Investment Fund was formed by agreement dated April 1, 1930, by and among Germantown Trust Company as trustee, and beneficiaries of the said fund, designated therein as participants, acting by and through Germantown Trust Company as agent. A copy of said agreement, marked Exhibit "B", is attached hereto and made a part hereof.

(e) The Germantown Trust Company Bond Investment Fund was created to form a single fund of high-grade bonds in which persons for whom the Company held securities as agent might have undivided interests. The trustee was to make and did make substantial permanent conservative investments.

(f) Changes in investments in bonds held in the

said fund have been made only for the purpose of conservation of the corpus of the fund and liquidation thereof upon withdrawal of units from the fund. The trustee has never been active in buying and selling bonds and has engaged in no other activities except the making of substantial permanent conservative investments and the collection and disbursement of the income received therefrom.

(g) The management of the said fund was solely in the hands of the trustee. The participants in the fund had no voice in its creation or in its management. The interests of the participants were not transferable. The participants could terminate their interests in the fund upon due notice, and the trustee upon giving the notice provided in the agreement could likewise terminate the trust. The powers and duties of the trustee, as well as the manner of operation of the fund, were the same as those usually existing in fiduciary relationships with the exception that the agreement permitted the commingling of the funds received in trusts from the participants.

Wherefore, the petitioner prays that this Board may hear the proceeding and find that the period for the assessment of 1932 income taxes had already expired on February 27, 1937, and that the petitioner was operating as a trust during 1932, rather than as a corporation.

GERMANTOWN TRUST COMPANY
BOND INVESTMENT FUND

By GERMANTOWN TRUST COMPANY, TRUSTEE

By THOS. HUMPHREYS, JR.

Germantown and Cheltenham

Petition

7

Avenues, Philadelphia,
Pennsylvania.

Paul F. Myers,
Martin W. Meyer,
Munsey Bldg., Washington, D. C.
Harold Evans,
Provident Trust Bldg., Phila., Penna.,
Counsel for Petitioner.

State of Pennsylvania,
County of Philadelphia, ss:

Thos. Humphreys, Jr., being duly sworn, says that he is Assistant Trust Officer of the petitioner above named and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated as to be upon information and belief, and those facts he believes to be true.

THOS. HUMPHREYS, JR.

Subscribed to and sworn to before me this 15th day of May, 1937.

Nellie Groves,

My commission expires April 14, 1939.

I am not a Director, Stockholder or Officer in the above named corporation.

*Petition
Exhibit "A"*

EXHIBIT "A"

**TREASURY DEPARTMENT
Washington
Office of
Commissioner of Internal Revenue**

Address Reply to
Commissioner of Internal Revenue
and refer to
Germantown Trust Company Bond Investment
Fund,

Germantown Trust Company, Trustee,
Cheltenham and Germantown Avenues,
Philadelphia, Pennsylvania.

Feb. 27, '37.

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) 1932 discloses a deficiency of \$ 3,686.00 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Wash:

*Petition
Exhibit "A"*

9

ington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING.

Commissioner.

By (Signed) W. T. SHERWOOD
Acting Deputy Commissioner.

Enclosures: . . .
Statement
Form 870

STATEMENT

IT:B:3

LJ-90D

In re: Germantown Trust Company Bond
Investment Fund,
Germantown Trust Company, Trustee,
Cheltenham and Germantown Avenues,
Philadelphia, Pennsylvania.
Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1932	\$3,686.00	None	\$3,686.00

The deficiency indicated above is shown in the agent's report dated July 8, 1936, a copy of which was furnished you under date of July 21, 1936, by

Petition
Exhibit "A"

the internal revenue agent in charge at Philadelphia, Pennsylvania.

Reference is made to your brief dated August 8, 1936, filed in the office of the internal revenue agent in charge, in protest against the findings of the examining officer.

Careful consideration has been given your protest, together with the Trust Agreement made on April 1, 1930, in connection with the review of the report of the internal revenue agent in charge.

It is held by this office that during the year 1932 you were operating as a corporation as defined by section 1111(2) and article 1312, Regulations 77, Revenue Act of 1932.

A response has not been received to the preliminary letter addressed to you under date of February 6, 1937.

Computation of Net Income

Net income reported on form 1041 \$26,570.58

Germantown Trust Company Bond
Investment Fund.

Statement.

Brought forward \$26,570.58

Unallowable deductions and additional
income:

(1) Interest accrued on bonds
purchased during taxable
year \$246.72

Less:

Error in computation 10.00 236.72

Net income adjusted \$26,807.30

Computation of Tax

Net income taxable at 13-3/4% \$26,807.30

Income tax liability \$ 3,686.00

Petition
Exhibit "A"

11

Income tax previously
assessed

None

Deficiency in income tax

\$ 3,686.00

Explanations

(1) The amount, representing the accrued interest, which you advanced to the seller of municipal bonds purchased during the taxable year, is not a proper deduction from income.

ANSWER

(Filed June 19, 1937)

Now comes the respondent, by his attorney Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayer, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the taxes in controversy are income taxes for the calendar year 1932. Denies the remainder of the allegations contained in paragraph 3 of the petition.

4 (a), (b), (c). Denies the Commissioner erred in respect to the matters in sub-paragraphs (a), (b) and (c) of paragraph 4 of the petition.

5 (a). Admits a so-called "Fiduciary Return of Income" for the calendar year 1932 (Form 1041) was filed in the name of The Germantown Trust Company Bond Investment Fund. Denies the remainder of the allegations contained in sub-paragraph (a) of paragraph 5 of the petition.

(b), (c), (d), (e), (f), (g). Denies the allegations contained in sub-paragraphs (b) to (g), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and

every allegation contained in taxpayer's petition, not hereinbefore admitted, qualified or denied.

7. Respondent alleges:

(a) That the petitioner is taxable for the year 1932 as a corporation.

(b) That the petitioner filed no corporation income tax return for the calendar year 1932 on Form 1120.

(c) That if a corporation makes no return of the tax imposed by Title I of the Revenue Act of 1932, but each of the shareholders includes in his return alleged distributive shares of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. (Section 275 (c) of Revenue Act of 1932; ch. 209, 47 Stat. 169, 237).

(d) That the notice of deficiency dated February 27, 1937, was mailed to the petitioner herein within four years after the last date on which the shareholder's returns were filed and prior to the expiration date of the statute of limitations for making assessments against said petitioner.

Wherefore it is prayed that this appeal be denied.

(Signed) MORRISON SHAFBOTH,

*Chief Counsel,
Bureau of Internal Revenue*

Of Counsel:

J. E. Marshall,

C. B. Marshall,

Special Attorneys,

Bureau of Internal Revenue.

PETITIONER'S REPLY**(Filed July 26, 1937)**

Now comes the petitioner and for reply to the respondent's answer alleges as follows:

7 (a) Denies that the petitioner is taxable for the year 1932 as a corporation.

(b) Denies that the petitioner filed no income tax return for the calendar year 1932 and on the contrary avers that the petitioner filed a fiduciary return on or before March 15, 1933, as set forth in paragraph 5. (a) of its petition.

(c) Admits that paragraph 7 (c) correctly sets forth the substance of Section 275 (c) of the Revenue Act of 1932, but denies that the said section is applicable in view of the fact that a return was filed by the petitioner as above set forth.

(d) Admits that the notice of deficiency dated February 27, 1937 was mailed within four years after the last date on which any return of a beneficiary of the trust was filed, but avers that such notice was not mailed within two years after the return was filed by the petitioner as required by Section 275 (a) of the Revenue Act of 1932.

Wherefore it is prayed that the petition be granted.

GERMANTOWN TRUST COMPANY
BOND INVESTMENT FUND
By GERMANTOWN TRUST COM-
PANY, TRUSTEE

Petitioner's Reply

15

By (S) THOMAS HUMPHREYS,
JR.,

Assistant Trust Officer.
Germantown & Cheltenham Aves.,
Philadelphia, Pa.

Paul F. Myers,
Martin W. Meyer,
Munsey Bldg., Wash., D. C.

Harold Evans,
Provident Trust Bldg., Phila., Penna.,
Counsel for Petitioner.

MEMORANDUM OPINION

(Entered Aug. 24, 1938)

Paul F. Myers, Esq., for the petitioner.
C. R. Marshall, Esq., for the respondent.

Murdock:

The Commissioner determined a deficiency of \$3,686 in income tax for 1932 on the theory that the petitioner is an association taxable as a corporation. The petitioner raises two issues:

- (1) It is an association taxable as a corporation;
- (2) Has the statute of limitations run against assessment and collection of the deficiency.

The facts have been stipulated and are found as stipulated. A decision favorable to the petitioner upon either issue will completely dispose of the case, and for that reason the first issue will not be discussed or decided.

The petitioner filed a "fiduciary Return of Income" for 1932 on March 15, 1933. The return was made on form 1041. The petitioner never filed a return on form 1120 for 1932. The notice of deficiency was mailed on February 27, 1937, which was more than two years after the filing of the return on form 1041 but was less than four years after the last date upon which any participant filed his 1932 income tax return. The fiduciary return was filed in good faith and gave all of the information necessary for the assessment of the tax upon a corporation.

The Commissioner used that information to prepare a return on form 1120 on September 17, 1936. He called this a "substitute return" and it bears a notation that the reason for preparing it was "Orig. filed on 1041".

The respondent concedes that the statute has run against assessment of the tax if the two-year period was started by the fiduciary return on form 1041. He contends, however, that this is a no-return case governed by section 275(c) of the Revenue Act of 1932 rather than by section 275(a). The Commissioner further concedes that the Board under similar facts held in the case of *Roosevelt & Son Investment Fund, et al.*, 34 B. T. A. 38, that a return on form 1041 started the running of the statutory period of two years provided in section 275(a) of the Revenue Act of 1928. He does not suggest that the present case is different in any important circumstance from the *Roosevelt* case. But he argues that the Circuit Court of Appeals for the Second Circuit, in dismissing his appeal in that case for lack of jurisdiction, (89 Fed. (2d) 706), indicated that the return on 1041 did not start the two-year period and only a return on 1120 would suffice. He says that the dissenting opinion of the Board in the *Roosevelt* case sets forth his contentions.

The Board in the *Roosevelt* case stated its reasons for concluding that a fiduciary return would suffice. Following its opinion in the *Roosevelt* case, the Board holds that the statute had run before the Commissioner mailed his notice in this proceeding.

Decision will be entered for the petitioner.

Entered Aug. 24, 1938.

(Seal)

DECISION

(Entered Aug. 26, 1938)

Pursuant to the determination of the Board, as set forth in its Memorandum Opinion entered August 24, 1938, it is

Ordered and decided: That there is no deficiency in income tax for the year 1932.

Entered Aug. 26, 1938.

(Signed) J. E. MURDOCK,
Member.

(Seal)

**PETITION FOR REVIEW AND ASSIGNMENTS
OF ERROR**

(Filed Nov. 17, 1938)

To the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit:

Now comes Guy T. Heilvering, Commissioner of Internal Revenue, by his attorneys, James W. Morris, Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and Ralph F. Staubly, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States; that the respondent on review (hereinafter referred to as the taxpayer) was, during the taxable year 1932, an association taxable as a corporation. The principal place of business of the taxpayer is situated at Germantown and Cheltenham Avenues, Philadelphia, Pennsylvania. The taxpayer filed a fiduciary information return on Form 1041 for the calendar year 1932, with the Collector of Internal Revenue for the First District of Pennsylvania, whose office is located within the jurisdiction of the United States Circuit Court of Appeals for the Third Circuit.

II.

The nature of the controversy is as follows, to wit:

*Petition for Review and
Assignments of Error*

The taxpayer is an association engaged in investments in securities for the benefit of its members or participants. The taxpayer on March 15, 1933, reported its taxable income for the calendar year 1932, on a fiduciary information return, Form 1041, disclosing a net taxable income of \$26,570.58. The taxpayer did not file a corporation income tax return on Form 1120. The several members of the taxpayer association included their distributive shares of the net income of the association in their respective income tax returns for the year 1932. The last date any participant filed his income tax return for said year was March 15, 1933.

Under date of February 27, 1937, the Commissioner, having determined that the taxpayer was taxable as a corporation, mailed a notice of deficiency to the taxpayer asserting a deficiency in income tax in the amount of \$3,686.00. The deficiency notice aforesaid was mailed to the taxpayer more than two years after the taxpayer filed its fiduciary return, Form 1041, but less than four years after the date on which a member or participant filed his income tax return for the year 1932.

Under date of May 22, 1937 the taxpayer filed a petition with the United States Board of Tax Appeals for redetermination of the deficiency asserted by the Commissioner as aforesaid. After the answer of the Commissioner was duly filed, the case was submitted to the Board for decision upon the pleadings and stipulations of fact. The memorandum opinion of the Board of Tax Appeals was rendered under date of August 24, 1938, and the final order of the Board was entered August 26, 1938, in which it was ordered and decided that there was no defi-

ciency in income taxes for the year 1932. In re-determining the deficiency the Board of Tax Appeals held and decided that the assessment and collection of the tax was barred by the statute of limitations in such case made and provided.

III.

The Commissioner of Internal Revenue being aggrieved by the conclusions of law contained in the decision of the Board of Tax Appeals and by its order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Third Circuit. The Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding and deciding that the tolling of the statute of limitations under Section 275(a) of the Revenue Act of 1928, began upon the filing of the fiduciary information return on Form 1041, on March 15, 1933.

2. The Board of Tax Appeals erred in not holding and deciding that the filing of the fiduciary information return on Form 1041 did not start the running of the statute of limitations under Section 275 (a) of the Revenue Act of 1928.

3. The Board of Tax Appeals erred in holding and deciding that a return, such as contemplated by the statute, was filed.

4. The Board of Tax Appeals erred in not holding that no return, such as contemplated by the statute, was filed.

5. The Board of Tax Appeals erred in holding and deciding that an information return was a return for the purpose of the tax within the meaning of Section 275(c) of the Revenue Act of 1928.

*Petition for Review and
Assignments of Error*

6. The Board of Tax Appeals erred in not holding and deciding that an information return is not a return for the purpose of the tax within the meaning of Section 275(c) of the Revenue Act of 1928.

7. The Board of Tax Appeals erred in entering its final order of redetermination that there is no deficiency in the tax.

8. The Board of Tax Appeals erred in failing to enter a final order of redetermination that there is a deficiency in the tax in the amount of \$3,686.00, as determined by the Commissioner.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Third Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd) J. P. WENCHEL,

W

*Chief Counsel, Bureau of
Internal Revenue.*

(Sgd) JAS. W. MORRIS,

*Assistant Attorney General.
Of Counsel:*

Ralph F. Staubly,

*Special Attorney,
Bureau of Internal Revenue.*

*Petition for Review and
Assignments of Error*

23

*United States of America,
District of Columbia, ss:*

Ralph F. Staubly, being duly sworn, says that he is a Special Attorney, Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief; and as to those matters he believes it to be true.

(Sgd) RALPH F. STAUBLY.

*Special Attorney, Bureau of
Internal Revenue.*

Sworn and subscribed to before me this 16th day of November, 1938.

(Sgd) Geo. W. Kries.
Notary Public.

My commission expires Nov. 15, 1942.

RFS spt 11-16-38

*Notice of Filing Petition
for Review*

NOTICE OF FILING PETITION FOR REVIEW

(Filed Dec. 1, 1938).

To:

Paul F. Myers, Esq.,
Martin W. Meyer, Esq.,
Williams, Myers, and Quiggle,
Munsey Building, Washington, D. C.

You are hereby notified that the Commissioner of Internal Revenue did, on the 17th day of Nov., 1938, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 17th day of November, 1938.

(Signed) J. P. WENCHEL,

RLW

*Chief Counsel,
Bureau of Internal Revenue.*

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 18 day of November, 1938.

PAUL F. MYERS,
MARTIN W. MEYER.

*Attorneys for Respondent
on Review.*

RFS-spt 11-16-38

*Notice of Filing Petition
for Review*

25

NOTICE OF FILING PETITION FOR REVIEW
(Filed Dec. 3, 1938)

To:

Germantown Trust Company, Trustee of the
Germantown Trust Company Bond Investment
Fund,

Germantown and Chelton Avenues,
Philadelphia, Pennsylvania.

You are hereby notified that the Commissioner of Internal Revenue did, on the 17th day of November, 1938, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 17th day of November, 1938.

(Signed) J. P. WENCHEL

RLW

*Chief Counsel, Bureau of
Internal Revenue.*

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this day of
1938.

Respondent on Review.

RFS-spt 11-16-38

*Affidavit of Service***AFFIDAVIT OF SERVICE**

(Filed Dec. 3, 1938)

*Commonwealth of Pennsylvania,**City and County of Philadelphia, ss:*

I, Leo P. Cooney, a duly authorized Internal Revenue Agent, being duly sworn according to law, depose and say that on November 21, 1938, I served the annexed Notice of Filing Petition for Review and copy of Petition for Review in the above-entitled case upon Mr. Thomas Humphreys, Jr., Assistant Trust Officer of Germantown Trust Company, Cheltenham and Germantown Avenues, Philadelphia, Pennsylvania, by handing to him a copy of Notice of Filing Petition and copy of Petition for Review, at the same time exhibiting to him the original Notice of Filing Petition.

(Sgd.) LEO P. COONEY,
Internal Revenue Agent.

Sworn to and subscribed before me this 21st day of November, 1938.

(Sgd.) Albert A. Rotham,
Internal Revenue Agent.

*Notice of Filing Petition
for Review*

27

**NOTICE OF FILING PETITION FOR
REVIEW**

(Filed Dec. 3, 1938)

To:

Harold Evans, Esq.,
Provident Trust Building,
Philadelphia, Pennsylvania.

You are hereby notified that the Commissioner of Internal Revenue did, on the 17th day of November, 1938, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Third Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 17th day of November, 1938.

(Signed) J. P. WENCHEL,

RLW

*Chief Counsel,
Bureau of Internal Revenue.*

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this day of
1938.

*Attorney for Respondent on
Review.*

*Affidavit of Service***AFFIDAVIT OF SERVICE**

(Filed Dec. 3, 1938)

*Commonwealth of Pennsylvania.**City and County of Philadelphia ss:*

I, Leo P. Cooney, a duly authorized Internal Revenue Agent, being first duly sworn according to law, depose and say that on November 19, 1938, I served the annexed Notice of Filing Petition for Review and copy of Petition for Review in the above entitled case upon Harold Evans, Esq., Attorney for Petitioner, at the Provident Trust Building, 17th and Chestnut Streets, Philadelphia, Pennsylvania, by handing to him copy of Notice of Filing Petition and copy of Petition for Review, at the same time exhibiting to him the original Notice of Filing Petition.

(Sgd.) LEO P. COONEY,
Internal Revenue Agent.

Sworn and subscribed to before me this 21st day of November, 1938.

(Sgd.) ALBERT A. ROTHMAN,
Internal Revenue Agent.

STIPULATION OF FACTS

(Filed April 28, 1938)

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that for the purposes of the above-entitled proceeding, the Board may accept as true the following facts and include them in its Findings of Fact. It is further agreed that neither party hereto shall be precluded from introducing at the hearing in this matter any further facts not inconsistent with those herein agreed to.

1. The Germantown Trust Company (hereinafter referred to as the "Company"), is a trust company organized and existing under the laws of the State of Pennsylvania. Its principal office is at Germantown and Cheltenham Avenues, Philadelphia, Pennsylvania.

2. Pursuant to an authorization contained in its corporate charter and the provisions of the laws of the State of Pennsylvania, the "Company" conducts a large trust business involving the handling of all forms of trust estates, and also acts as agent for various individuals and corporations in the custody, handling, and management of their investments.

In order to afford persons of small means the advantage available to others and the advantage of investing funds in diversified high grade bonds without delay and undue expense and under conditions which would permit of ready liquidation of the in-

vestment, the "Company" by agreement dated April 1, 1930, formed the so-called "Germantown Trust Company Bond Investment Fund" (hereinafter referred to as the "Fund"), a copy of which "agreement"—designated the "Germantown Trust Company Bond Investment Fund Agreement"—is attached hereto as Exhibit "A" and made a part hereof.

3. The "Company" was named and designated as "trustee" under the aforesaid agreement (Exhibit "A") and has since April 1, 1930, and at all times material to this proceeding, been acting as "trustee" under the provisions of said agreement. The "Company" acting as "trustee" under the said agreement is hereinafter referred to as the "petitioner". (Whenever the words "agent", "trust", "trustee" and "trust agreement" are used herein, they are used merely for the purpose of description and not as a technical conclusion of law of the status of the entity involved under the Revenue Act of 1932: such conclusion being for the Board of Tax Appeals to determine in the instant case.)

4. The purpose of the "agreement" was to form a single fund of high grade bonds to be known as the "Germantown Trust Company Bond Investment Fund" in which persons for whom the petitioner shall hold securities as agent shall have undivided interest. In accordance with the purpose of the agreement, and in accordance with its provisions, investments were confined to corporate bonds and bonds issued by a nation or by a political subdivision thereof, except in the case of reorganization and under conversion privileges as provided in Article 2 of the said agreement (Exhibit "A").

Only persons for whom the "Company" held securities as "agent" or "trustee" could and did participate in said fund.

5. Such person desiring to participate under the provision of the aforesaid agreement (Exhibit "A") signed an assent or authorization substantially as set forth in Article 6 of the agreement (Exhibit "A"), which person thereafter was called a "participant". The participants deposited with the petitioner under the agreement cash funds to be invested and reinvested; and a certificate of participation was issued by the petitioner to the participant evidencing the undivided interest of the participant in the fund. The said certificates were not transferable. The certificates issued remained in the custody of the "Company" as part of the securities of such participant's account. When a participant withdrew all or part of his share of the fund, the petitioner cancelled the old certificate and issued a new one for the remaining share or shares, if there was any share not withdrawn.

6. The rights, powers, duties and obligations of the various parties to the said agreement (Exhibit "A") in the aforesaid "Fund" are fixed and determined by the provisions of the said agreement and said fund has at all times since its formation been operated in accordance with and pursuant to the terms of the said agreement (Exhibit "A"). The petitioner operated the fund in accordance with the powers and duties provided in the said agreement. The Company in the exercise of its powers and duties as trustee held the legal title to all the securities, cash and other assets of the Fund; it kept all the securities, cash and other assets of the Fund

separate from all other securities, cash and assets of the Company; it kept accounts of all transactions on account of the Fund; at the request of any participant at any time it gave to such participant full information about the Fund and about the securities in which the Fund was to be invested; it furnished each participant an annual statement of the condition of the Fund and a statement as to each participant's share in the income, profits or losses from sales or exchanges of the principal; it was authorized to pay such taxes as it shall be required to pay because of its trusteeship; it was authorized at any time, in its sole discretion, to terminate the trust in whole or in part by disposing of all or part of the assets of the Fund and by distributing the proceeds thereof pro rata among the participants. It also might at any time, on giving ten days' written notice to a participant, cancel all of his shares, by paying him the value of such shares fixed as provided by the agreement (Exhibit "A") with respect to the withdrawal of shares; and it was to be liable only for the exercise of the ordinary care and diligence required of a trustee.

7. The manner in which cash funds were deposited with the Company as trustee in the fund; the manner in which original and new shares were issued against the fund; the manner in which investments were to be made of the funds; the manner in which certificates were to be issued, held, withdrawn, cancelled, reissued and redeemed; the manner in which participants were to assent to investment of cash and proceeds in securities by the petitioner; the manner in which the income of the fund was to be collected, calculated and distributed; and the manner in which the agreement was to be

amended; were set forth under the provisions of the "agreement" (Exhibit "A"); they were all carried out in accordance with and pursuant to its terms and provisions.

8. The purpose of the agreement was to make substantially permanent conservative investments. The said purpose was carried out as far as possible and changes in investment were necessary from time to time to keep the funds so invested. Securities were sometimes sold within a short time after their purchase where, in the discretion of the Committee, it was considered advisable. The company's trust committee managed the "fund" as provided in the agreement, which was in the same way as various other "trusts" for which it acted as trustee were managed.

9. All profits derived from the sale or exchange of securities were to be considered as principal and remain in the Fund, except as provided in the "agreement". Shares of the Fund could be and were withdrawn in accordance with the manner provided in Article 5 of the aforesaid agreement (Exhibit "A").

10. During the year 1932 there was great uncertainty with respect to the financial condition of all corporations and political subdivisions in the United States. Market values were declining, the business outlook was pessimistic and persons generally, including the participants in this fund and the trustee thereof, were deeply concerned about the safety of their investments. There were almost daily financial failures and frequent defaults by corporations, cities and towns of their interest obligations and investors made frequent changes in an

effort to conserve their property. The company as trustee, not only for this fund but for its other trust accounts, made changes in its investments during 1932 in conformity with those existing conditions.

11. At the beginning of the year 1932 there were fifty-seven persons with agency and trust accounts in the petitioner's trust company who were participants in this fund. They owned 487 units, each having a market value on January 1, 1932 of approximately \$841.68. During that year twenty-one units were withdrawn in this fund by five persons. Two of these persons withdrew their entire investment. The other three withdrew only a portion of their investment. During that year the petitioner made twenty-nine sales representing thirteen different bonds at a total selling price of \$144,500.90. On these sales a net loss of \$6,460.42 was sustained. An itemized list of the sales with the description of the bonds sold, the date of sale and the proceeds of sale is attached hereto as Exhibit "B".

12. During the year 1932 twenty-three persons who were not participants in this fund at the beginning of the year became participants therein in the manner set forth in the agreement of April 1, 1930. To these persons and nine of those who were already participants at the beginning of the year there were issued 129 units in the manner set forth in the agreement of April 1, 1930. By the end of the year 1932 there were 78 participants in the fund with 595 units, each having a market value on December 31, 1932 of approximately \$889.02. To invest these funds and the funds realized from sales made the petitioner during the year 1932 made six

ty-six purchases of twenty-six different bonds, some of which were obligations of the same corporation or city but with a different interest rate or different maturity. These purchases ~~were~~ made at a total cost of \$246,615.07. An itemized list of the purchases with a description of the bond purchased, the date of purchase and the total purchase price is attached hereto as Exhibit "C".

13. On March 15, 1933, the Germantown Trust, acting as trustee under the aforesaid agreement, filed on behalf of the aforesaid Germantown Trust Company Bond Investment Fund a so-called "Fiduciary Return of Income" on Form 1041 for the calendar year 1932, with the Collector of Internal Revenue of the First District of Pennsylvania. A photostatic copy of the aforesaid return is attached hereto as Exhibit "D" and made a part hereof. The return filed discloses the receipt in 1932 of interest on bank deposits, notes, bonds, etc., in the amount of \$29,309.09.

14. The petitioner never has filed a return on Form 1120 for the year 1932. On September 17, 1936, there was prepared by the respondent a so-called "Substitute Return" for the petitioner herein on Form 1120 (corporation income tax return) for the year 1932. A photostatic copy of the aforesaid return is attached hereto as Exhibit "E" and made a part hereof.

15. The individual participants in the fund who were required to make a Federal individual income tax return for 1932 for the amounts of the distributed and/or distributable income of the petitioner for the year 1932, have included in their respective returns the share of the said income as disclosed on

Stipulation of Facts
Exhibit A

the schedule attached to Exhibit "D". The last date on which any participant of this fund filed his income tax return for the year 1932 was, for the purpose of this proceeding on March 15, 1933.

16. On or about July 8, 1936, a revenue agent for the respondent recommended that the petitioner be taxed as a corporation as defined by Section 1111(2) of the Revenue Act of 1932, and Article 1312 of Regulations 77. A copy of said agent's report was furnished the petitioner under date of July 21, 1936.

17. On February 27, 1937, the respondent mailed a notice of deficiency to the petitioner herein, stating, among other things, that the petitioner was "during the year 1932 * * * operating as a corporation as defined by Section 1111(2) and Article 1312, Regulations 77, Revenue Act of 1932;" a copy of said "notice" is attached to the petition filed in this proceeding.

PAUL F. MYERS,
Counsel for Petitioner.

(Sgd.) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue

EXHIBIT A

THIS AGREEMENT, to be known as GERMAN-TOWN TRUST COMPANY BOND INVESTMENT FUND AGREEMENT, is made on April 1, 1930 by and among GERMANTOWN TRUST

Stipulation of Facts
Exhibit A

37

COMPANY, hereinafter called the Company, as trustee hereunder, and such persons as shall from time to time assent thereto in the manner hereinafter set forth, which persons are hereinafter called Participants.

The purpose of this agreement is to form a single fund of high-grade bonds, to be known as GFR-MANTOWN TRUST COMPANY BOND INVESTMENT FUND, hereinafter called the Fund, in which persons for whom the Company shall hold securities as agent, shall have undivided interests. The purpose is to make substantially permanent conservative investments, although changes in the bonds may be necessary or wise from time to time.

1. ISSUING OF SHARES

On the date hereof, each original participant shall deposit with the Company as trustee hereunder one thousand dollars (\$1000) for each undivided share of the Fund in which he shall invest and the Company shall promptly invest all such deposits as hereinafter provided. New shares of the Fund may be issued by the Company at any time. For the issuing of each such new share there shall be required a deposit with the Company of a sum equal to the total value of all the assets of the Fund, divided by the number of shares outstanding in the hands of participants at the close of business on the next preceding day of business. Such value shall be fixed by the Company as of the close of the said next preceding day of business. There shall also be required for the issuing of each such new share a payment to the income account of the Fund equal to the income accrued on each prior share to the

Stipulation of Facts
Exhibit A

day of issuing such new share, but not distributable on that day.

2. INVESTMENTS

The Company shall promptly invest and shall re-invest and keep constantly invested the deposits so made with it by participants, confining itself to investments in corporate bonds and to bonds issued by a nation or by a political subdivision thereof. But the Company may take or purchase other securities or property in a reorganization in exchange for such bonds or by virtue of a privilege of conversion given by such bonds.

3. INCOME

The Company shall collect the income of the Fund promptly as it shall become due, and shall on the first day of each January, April, July and October credit each participant with his proportionate share thereof, according to the number of his shares in the Fund. Pending such distribution, the income of the Fund shall be deposited in a separate account and the interest on such deposit account shall also be credited proportionately to the participants.

Except as herein otherwise provided, all profits derived from the sale or exchange of securities shall be treated as principal and shall remain in the Fund.

4. CERTIFICATE.

For each deposit a participant shall receive from the Company a certificate of participation in the Fund signed by the president or by a vice-president of the Company and by the secretary or by an assistant secretary of the Company and sealed with

Stipulation of Facts
Exhibit A

39

the Company's seal. This certificate shall remain in the custody of the Company as part of the securities of such participant's account. The Company may at any time, in its sole discretion, increase or decrease the number of shares into which the Fund shall be divided, and shall in each case cancel all outstanding certificates and shall issue to each participant a certificate or certificates for such participant's proportionate number of shares according to such increase or decrease. Each certificate shall be in the following form:

GERMANTOWN TRUST COMPANY BOND INVESTMENT FUND

This certifies that _____ is the owner of _____ shares of Germantown Trust Company Bond Investment Fund, subject to the provisions of an agreement dated April 1, 1930 among Germantown Trust Company, Trustee, and the participants in such Fund, a copy of which agreement is on file at the office of Germantown Trust Company.

Executed on _____, 19 _____

Germantown Trust Company

By _____, President.

Attest: _____, Secretary.

(Corporate Seal)

5. WITHDRAWAL OF SHARES.

The said certificates shall not be transferable. A share or any number of shares may be withdrawn on any quarterly day, which shall be the first days of January, April, July and October (or the next succeeding day of business, if any of these shall fall

Stipulation of Facts
Exhibit A

on a Sunday or legal holiday) in the following manner: If and when a participant or his legal representatives shall notify the Company in writing that all or part of his shares are to be withdrawn from the Fund, the Company shall, on the next quarterly day occurring not less than ten days after the receipt of such notice in writing, pay such participant or his legal representatives the then value of such shares in cash taken from the Fund, and shall cancel his certificates, issuing to him a new certificate for his remaining share or shares, if there be any not withdrawn. The value of each share on a quarterly day shall be fixed as hereinabove provided with respect to the issuing of new shares.

6. ASSENT OF PARTICIPANTS.

The assent hereto of each participant shall be evidenced by his signature to a letter in substantially the following form:

"I hereby authorize Germantown Trust Company to invest for me certain cash and/or the proceeds of certain securities in shares of Germantown Trust Company Bond Investment Fund in accordance with an agreement dated April 1, 1930 by and among Germantown Trust Company and such persons as shall from time to time assent thereto, which agreement is known as Germantown Trust Company Bond Investment Fund Agreement. The said cash and/or proceeds of securities are set forth in the schedule attached hereto."

The said schedule shall state the cash to be so invested and/or the securities to be sold, with the terms of such sale.

7. POWERS AND DUTIES OF TRUSTEE.

In the exercise of its powers and duties as trustee, the Company shall be subject to the following provisions:

(1) **INVESTMENTS:** It shall have power in its uncontrolled discretion and from time to time (a) to invest in bonds, as above provided, and to charge any premium paid therefor to income or to principal as it shall deem best; (b) to buy and sell the bonds, stocks and other assets of the Fund for such prices and on such terms as it shall think best; (c) to enter into any plan of reorganization with respect to bonds, stocks or other securities forming part of the Fund, and in the execution thereof to pay any money, receive any other bonds, stocks or other securities or assets, and take any other action which it shall deem best; (d) to hold or dispose of stock dividends and rights to subscribe to stock as it shall think best, and to allot such dividends or the proceeds thereof to principal or to income.

(2) **TITLE TO ASSETS:** It shall have legal title to all the securities, cash and other assets of the Fund and may cause such securities to be registered in its name without designation, that it hold such securities in a fiduciary capacity, but in that event shall execute and place with the securities of the Fund a declaration that it holds such securities as trustee for the Fund.

(3) **CUSTODY AND ACCOUNTS:** It shall keep all the securities, cash and other assets of the Fund separate from all other securities, cash and assets, and shall keep true and accurate accounts of all transactions on account of the Fund.

Stipulation of Facts
Exhibit A

(4) **NO PROFITS TO COMPANY:** It shall perform the duties of trustee hereunder without profit to itself and shall not become a participant hereunder. This shall not prevent the Company from charging the participants for its services to them as agent.

(5) **INFORMATION TO PARTICIPANTS:** It shall, on request by any participant at any time, give to such participant full information about the Fund and about the securities in which the Fund shall be invested. It shall annually, as soon as possible after January 1, send to each participant a statement of the condition of the Fund, and a statement as to such participant's share in income and in profits or losses from sales or exchanges of principal.

(6) **TAXES:** It shall pay such taxes as it shall be required to pay because of its trusteeship and shall, in the distribution of income hereunder, charge such taxes equitably against the several participants.

(7) **TERMINATION:** It may, at any time, in its sole discretion, terminate the trust in whole or in part by disposing of all or part of the assets of the Fund and distributing the proceeds thereof pro rata among the participants. It may also, at any time on giving ten days' written notice to a participant, cancel all of his shares, paying him the value of such shares fixed as provided herein with respect to the withdrawal of shares.

(8) **LIABILITY:** It shall be liable only for the exercise of the ordinary care and diligence required of a trustee.

Stipulation of Facts
Exhibit A

43

8. AMENDMENTS.

The Company may at any time send a written notice to each participant, stating a proposed amendment to this agreement. Such a notice shall be mailed to the address of the participant last known to the Company. After sixty days from such mailing the proposed amendment shall become effective with respect to every participant who shall not have notified the Company in writing that he objects to it.

In witness whereof, the Germantown Trust Company has hereunto caused its corporate seal to be affixed, attested by its secretary and these presents to be signed by its president, dated the first day of April, 1930.

GERMANTOWN TRUST COMPANY

By *Sg. C. S. SMYTH.*
President.

Attest:

Sg. JAMES A. KELLY.
Secretary.

(Corporate Seal)

*Order***ORDER**

(Filed Jan. 18, 1939)

Upon consideration of the motion filed hereby by counsel for petitioner, and assented to by counsel for respondent, with reservation as to venue herein, moving the Court to permit the transmission to this Court of copies of Exhibit "D" of the Stipulation of Facts, exclusive of the schedules thereto attached, and Page 1 of Exhibit "E" of said Stipulation of Facts, as physical exhibits, not to be included in the printed record on review, it is by the Court this 17 day of January, 1939

Ordered that the said motion be and is hereby granted.

And it is further ordered that the Clerk of this Court transmit a certified copy of this order to the Clerk of the United States Board of Tax Appeals to be by him incorporated in the record on review.

By the Court,

(s) ALBERT B. MARIS.
Circuit Judge.

RFS-spt 1-12-39

Received and Filed Jan. 17, 1939.
Wm. P. Rowland, *Clerk.*

PRAECIPE FOR RECORD

(Filed Jan. 21, 1939)

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Third Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Third Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board,

(a) Petition (including deficiency letter, but excluding Exhibit "B");

(b) Answer;

(c) Reply.

3. Memorandum opinion and decision of the Board.

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Stipulation of Facts, including Exhibit "A", but excluding Exhibits "B", "C", "D" and "E". (Exhibits "D" and "E", in so far as material, to be transmitted with the transcript

Praeipice for Record

of the record on review, as physical exhibits, as per Court order).

6. Order enlarging time for the preparation of the evidence and for the transmission and delivery of the record. (Not included in record)

7. This praecipe:

(Signed) J. P. WENCHEL,

RLW

*Chief Counsel, Bureau of
Internal Revenue.*

Service of a copy of the within praecipe is hereby admitted this 13 day of January, 1939.

(Sgnd) PAUL F. MYERS,

*Attorney for Respondent
on Review.*

RFS-spt 1-5-39

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 46, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 30th day of January, 1939.

B. D. GAMBLE,
Clerk,

*United States Board of Tax
Appeals.*

(Seal)

[fol. 48] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, MARCH TERM, 1939

No. 6989

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

VS.

GERMANTOWN TRUST COMPANY, Trustee of Germantown
Trust Company Bond Investment Fund, Respondent

And afterwards, to wit, the 13th day of April, 1939, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable William Clark and Honorable Francis Biddle, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 14th day of July, 1939, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 49] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, MARCH TERM, 1939

No. 6989

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

V.

GERMANTOWN TRUST COMPANY, Trustee Germantown Trust
Co. Bond Investment Fund, Respondent

Petition for Review from the United States Board of Tax
Appeals

OPINION—Filed July 14, 1939

Before Biggs, Clark and Biddle, Circuit Judges

BIDDLE, Circuit Judge:

This appeal from the Board of Tax Appeals involves two questions: Whether this court has jurisdiction; and whether the period for assessing the tax is governed by Section 275

(a) or 275 (c) of the Revenue Act of 1932. We shall consider them in that order.

The taxpayer is the trustee. Germantown Trust Company Bond Investment Fund was formed by Germantown Trust Company, a Pennsylvania trust company, under an agreement dated April 1, 1930, by which the trust company acted as trustee by investing the money of persons deposited with it in diversified securities, in which they secured undivided shares, represented by certificates issued to them by the trustee. On March 15, 1933, the trust company, as trustee, filed for the Fund a "Fiduciary Return of Income" on Treasury Form 1041, on behalf of the trust estate, for the calendar year 1932, with the Collector of Internal Revenue for the First Collection District of Pennsylvania. It did not file a corporation income tax return. The fiduciary return disclosed net taxable income of \$26,570.58, which was included by the participants in the fund in their individual tax returns, of which the last was filed on March 15, 1933. On February 27, 1937, the Commissioner of Internal Revenue mailed a notice of deficiency to the trustee and the Fund, basing the deficiency on the ground that during the year 1932 the Fund was operating as a corporation as defined by Section 1111 (2) and Article 1312, Regulations 77, Revenue Act of 1932. On petition by the taxpayer the Board of Tax Appeals held that assessment of the deficiency was barred by Section 275 (a).

Jurisdiction

Section 1002 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 110, as amended by the Act of 1934, c. 277, 48 Stat. 760 (26 U. S. C. 641), provides: "Except as provided in subdivision (b), such decision (of the Board of Tax Appeals) may be reviewed by the Circuit Court of Appeals for the circuit in which is located the Collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia."

Was a return of tax filed in this case so as to give this court jurisdiction? We can find no basis for distinguishing between a fiduciary return and a corporation income tax return, so far as jurisdiction is concerned. Both are tax returns, though one may be accompanied by payment, and both involve a definite act on which jurisdiction may be hung. Both are returns "of the tax in respect of which

[fol. 51] the liability arises". If the Fund is taxable the tax is based on the information shown in the Fiduciary Return. It is spoken of as a "return" by Sec. 142 of the Act¹: "Requirement of return.—Every fiduciary . . . shall make under oath a return . . . for any of the following individuals, estates, or trusts for which he acts . . ." The distinction becomes irrational for this purpose. It is only when no act is performed by the taxpayer, no return of any kind made, that it becomes necessary to set up jurisdiction elsewhere.

Period of Limitation

Section 275 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169 (26 U. S. C. 275) reads: "General Rule.—The amount of income taxes imposed by this title shall be assessed within two years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period."

275 (c) reads: "Corporation and Shareholder.—If a corporation makes no return of the tax imposed by this title but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed."

Section 276 (a) of the Act (26 U. S. C. 276) reads as follows; "False return or no return.—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time."

It will be seen that there are three classes of limitations. Where a return is filed, the assessment must be made in two years. Where no return is filed, or where the return is false, there is no period of limitation. But where the cor- [fol. 52] poration files no return but its shareholders do, the period is four years from the last date on which any shareholder's return was filed. This section of course does not apply where a corporation makes no return and its shareholders include its dividends in their return. It looks to a case only where the corporation makes no return and each

¹ Revenue Act of 1932, c. 209, 47 Stat. 214, 26 U. S. C. 142.

of its shareholders includes "his distributive share of the net income." Shareholders do not ordinarily include "distributive shares"; ordinarily they return dividends. When, however, they believe that the entity is not a corporation but a fiduciary, liable only to file a fiduciary return, there are no dividends, and they return their distributive shares, as shown by the fiduciary return. It is hard to imagine their returning such distributive shares without the fiduciary return, from which they obtain the necessary information.

It is difficult to conceive, therefore, how Section (c) could apply except where a fiduciary return is made, as in this case, by the entity, imagining itself to be a fiduciary, but perhaps later determined to be a corporation. The section must be meant to apply to a case where this entity fails to make a corporation return but makes only a fiduciary return. Then the longer period of four years permits the government to determine whether the grouping of individuals in the particular form used creates a liability in addition to and separate from that of the individuals—a corporate liability—often a difficult and close question, and largely unsettled in 1934. If this were otherwise, and the section not directed to this very situation, why a four year limitation?

This intention as shown in the report of the Ways and Means Committee of the House on the 1926 Act, in which the provision first appeared as Section 277 (a) (5)²: "This section provides that if a corporation makes no return of the tax imposed by this bill, but each of the shareholders includes in his return his distributive share of the net income [fol. 53] of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. This provision is limited to taxes imposed under this bill, and it is incorporated in the bill to make certain that if in the future the beneficiaries of a trust or the members of an association include their distributive share in their income tax return, and if at a later date it should be held that the trust or association is subject to the corporation tax and should have made the return, the statute of limitations as applied to the trust or association shall run from the dates above specified." The Senate Committee repeated this explanation.³ It was natural that the Commissioner should be given a

² H. Rep. No. 1, 69th Cong., 1st Sess. p. 11.

³ S. Rep. No. 52, 69th Cong., 1st Sess., p. 28.

longer period for assessment at that time, when the considerations making associations taxable as corporations had not been established by the Supreme Court.

We are of course familiar with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner v. Roosevelt & Son Inv. Fund*, 89 F. (2d) 706, that it did not have jurisdiction, not passing on the other question, and dismissing the appeal. Similar facts were presented. The court thought that "return of the tax" must carry the same meaning in the venue section as in the limitation sections.⁴ But courts have not felt it necessary to invoke such rigid consistency where different meanings were evidently intended for the same words. See *Helvering v. British-American Tobacco Co.*, 69 F. (2d) 528, 530 (C. C. A. 2d), affirmed 293 U. S. 95; *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 86-88. The context of words may affect their meanings. The kind of return required by classification for jurisdiction need not be the same as the return which will start a period of limitation.

We decide therefore that we have jurisdiction; that section 275 (c) is applicable; and that the decision of the Board [fol. 54] of Tax Appeals must be reversed. The record is remanded to the Board of Tax Appeals with the direction to determine the Taxpayer's appeal on the merits.

A true Copy:

Teste:

_____, Clerk of the United States Circuit Court
of Appeals for the Third Circuit.

[fol. 55] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, MARCH TERM, 1939

No. 6989

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

GERMANTOWN TRUST Co., Trustee Germantown Trust Co.
Bond Investment Fund, Respondent

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

⁴ Sections 275 (a) and (c) of the Revenue Act of 1928, identical with those we are considering.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be, and the same is hereby reversed, and the cause remanded to the said Board of Tax Appeals with direction to determine the taxpayer's appeal on the merits.

Philadelphia, July 14, 1939.

Francis Biddle, Circuit Judge.

Endorsements: Order Reversing Decree etc. Received & Filed Jul. 14, 1939. William P. Rowland, Clerk.

(Here follow 3 photolithographs, side folios 56-58.)

**EXHIBIT "D" of Stip. Facts, exclusive of schedules
attached thereto.**

<p style="font-size: small;">Form 1041 TREASURY DEPARTMENT INTERNAL REVENUE SERVICE</p> <p style="font-size: x-small;">(Auditor's Stamp)</p> <p style="text-align: right; font-size: small;">MAR 2 1934</p>	<h2 style="margin: 0;">FIDUCIARY RETURN OF INCOME</h2> <h3 style="margin: 0;">For Calendar Year 1932</h3> <p style="font-size: x-small;">Or Fiscal Year began _____, 1931, and ended _____, 1932</p> <p style="font-size: x-small;">File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year (PRINT NAMES AND ADDRESS PLAINLY BELOW)</p> <p>Name of Estate or Trust <u>GERMANTOWN TRUST COMPANY - BOND INVESTMENT FUND -</u></p> <p>Name and Address of Fiduciary <u>GERMANTOWN TRUST COMPANY</u> <u>GERMANTOWN & CHELSEA AVENUES</u> <u>GERMANTOWN, PHILA., PA.</u></p>	<p style="font-size: x-small;">Do Not Write in These Spaces</p> <p style="font-size: large; font-weight: bold;">539</p> <p style="font-size: large;">953718</p> <p style="font-size: x-small;">State _____</p> <p style="font-size: x-small;">(State Number)</p>
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1. Was a return of income for 1932 filed on behalf of the estate or trust named above?	Yes
2. If so, to what collector's office was it sent? (Give district or city and State)	1st Pa.
3. Give date of creation of trust or decedent's death	April 11 1930
4. State whether books are kept on cash or accrual basis	Cash

INCOME	
1. Net profit from Trade or Business. (From Schedule A)	
2. Interest on Bank Deposits, Notes, and Corporation Bonds, etc. (except interest on tax-free covenant bonds)	14251.59
3. Interest on Tax-free Covenant Bonds upon which a tax was paid at source	15057.50
4. Income from Partnerships, Syndicates, Groups, etc., and Fiduciaries: (State name and address)	
5. Rents and Royalties. (From Schedule B)	
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	
7. Dividends on:	
(a) Stock of Domestic Corporations subject to income tax under Revenue Act of 1932	
(b) Stock of Domestic Corporations not subject to income tax under Revenue Act of 1932	
(c) Stock of Foreign Corporations	
8. Other Income: (State nature of income)	
(a) _____	
(b) _____	
9. TOTAL INCOME IN ITEMS 1 TO 8	29309.09

DEDUCTIONS	
10. Interest Paid	2628.91
11. Taxes Paid	105.60
12. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)	
13. Bad Debts. (Explain in Schedule E)	
14. Contributions. (Explain in Schedule E)	
15. Other Deductions Authorized by Law. (Explain in Schedule E)	4.00
16. TOTAL DEDUCTIONS IN ITEMS 10 TO 15	2738.51
17. NET INCOME (Item 9 minus Item 16)	26570.58

5. Rents and Royalties. (From Schedule B)			
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
7. Dividends:			
(a) Stock of Domestic Corporations subject to income tax under Revenue Act of 1932			
(b) Stock of Domestic Corporations not subject to income tax under Revenue Act of 1932			
(c) Stock of Foreign Corporations			
8. Other Income: (State nature of income.)			
(a)			
(b)			
9. TOTAL INCOME IN ITEMS 1 TO 8			29309. 09
DEDUCTIONS			
10. Interest Paid		2628. 91	
11. Taxes Paid		105. 60	
12. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)			
13. Bad Debts. (Explain in Schedule E)			
14. Contributions. (Explain in Schedule E)			
15. Other Deductions Authorized by Law. (Explain in Schedule E)	Adm.	4. 00	
16. TOTAL DEDUCTIONS IN ITEMS 10 TO 15			2738. 51
17. NET INCOME (From 9 minus Item 16)			26570. 58

BENEFICIARIES' SHARES OF INCOME AND CREDITS
(See Instruction 18)

1. NAME AND ADDRESS OF EACH BENEFICIARY (Designate surviving spouse and nonresident alien)	2. PER- CENTAGE OF BEN- EFICIAL INTEREST	3. DIVIDENDS (Class 7 (a) above, or Item 15, whichever amount is smaller)	4. BALANCE OF NEW INCOME (Class 17 minus Item 7 (a))	5. CAPITAL NET GAIN OR LOSS (Schedule D, Column 5)	6. INCOME TAX PAID AT SOURCE (% of Item 3)	7. INCOME TAX AND FOREIGN CREDITS ON UNITED STATES TERRITORIES
(a)						
(b)						
(c)						
(d)						
(e)						
(f)						
(g)						
(h)						
(i)						
(j)						
(k)						
(l)						
(m)						
(n)						
(o)						
(p)						
(q)						
(r)						
(s)						
(t)						
(u)						
(v)						
(w)						
(x)						
(y)						
(z)						
Totals						

NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC.
(See Instruction 19)

1. OBLIGATIONS OR BONDS	2. AMOUNT OWNED	3. INTEREST RECEIVED
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia		1051. 14
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness		1350. 00
(c) Liberty 3½% Bonds and other obligations of U. S. issued before Sept. 1, 1917, and obligations of U. S. possessions		
(d) Liberty 4% and 4½% Bonds and Treasury Bonds		
(e) Treasury Notes		

SCHEDULE A—INCOME FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business (state kind of business).....		\$	
Cost of Goods Sold			
2. Labor.....	\$	10. Salaries, except "Labor," reported on Line 2.....	\$
3. Material and supplies.....		11. Interest on business indebtedness to others.....	
4. Merchandise bought for sale.....		12. Taxes on business and business property.....	
5. Other costs (itemize below or on separate sheet).....		13. Losses (explain in table at foot of page).....	
6. Plus inventory at beginning of year.....		14. Bad debts arising from sales.....	
7. TOTAL (Lines 2 to 6).....	\$	15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page).....	
8. Less inventory at end of year.....		16. Rent, repairs, and other expenses (itemize below or on separate sheet).....	
9. NET COST OF GOODS SOLD (Line 7 minus Line 8).....	\$	17. TOTAL (Lines 10 to 16).....	\$
Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		18. TOTAL DEDUCTIONS (Line 9 plus Line 17).....	\$
Explanation of deductions claimed on Lines 5 and 16.....		19. NET PROFIT Line 1 minus Line 18 (Enter as item 1).....	\$

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST OR VALUE AS OF MARCH 1, 1913, WHICHEVER GREATER	4. DEPRECIATION (Explain in table at foot of page)	5. REPAIRS	6. OTHER EXPENSES (Itemize below)	7. NET PROFIT (Enter as item 8)

Itemizations of deductions used in Column 6.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION ON MARCH 1, 1913	7. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION ON MARCH 1, 1913	8. NET PROFIT OR LOSS (Enter as item 9)
LOVABLE LOSSES ON SALE OF SECURITIES HELD LESS THAN TWO YEARS DIVIDED PROPORTIONATELY AMONG THE PARTICIPANTS AS PER SCHEDULE ATTACHED							
							LOSS 6460.12

How property acquired.

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

KIND OF PROPERTY	1. DATE ACQUIRED	2. DATE SOLD	3. AMOUNT RECEIVED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION ON MARCH 1, 1913	7. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION ON MARCH 1, 1913	8. NET GAIN OR LOSS (Enter in Column 8, Item 18)
	Mo. Day Year	Mo. Day Year						

How property acquired.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT REALIZED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION ON MARCH 1, 1913	7. DEPRECIATION ALLOWED (ON ALLOWABLE) SINCE ACQUISITION ON MARCH 1, 1913	8. NET PROFIT OR LOSS (Enter in Item 8)
ALLOWABLE LOSSES ON SALE OF SECURITIES HELD LESS THAN TWO YEARS DIVIDED PROPORTIONATELY AMONG THE PARTICIPANTS AS PER SCHEDULE ATTACHED							LOSS 6460.12

How property acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT REALIZED	5. COST	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	7. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION ON MARCH 1, 1913	8. DEPRECIATION ALLOWED (ON ALLOWABLE) SINCE ACQUISITION ON MARCH 1, 1913	9. NET GAIN OR LOSS (Enter in Column 9, Item 9)
	Mo. Day, Year	Mo. Day, Year						

How property acquired

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, AND 15

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST (Exclusive of Land)	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE (Exclusive of Land)	7. DEPRECIATION ALLOWED (ON ALLOWABLE) IN FRANK YEARS	8. DEPRECIATION ALLOWABLE THIS YEAR

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 13

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST OR VALUE AS OF MARCH 1, 1913, WHENEVER OCCURRED	4. SUBSEQUENT IMPROVEMENTS	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. INSURANCE AND SALVAGE VALUE	7. DEDUCTIBLE LOSS

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and, to the best of my knowledge and belief, is a true and complete return, made in good faith for the accounting and stated payment to the Revenue Act of 1923 and the Regulations issued thereunder:

Sworn to and subscribed before me this

Wm. H. Miller
John Miller
 (Signature of preparer)
 (Name)
 (Address of preparer)

GERMANTOWN TRUST COMPANY

(Signature of Secretary or Treasurer)

NOTARIAL SEAL

See Instruction 24

(An amended return must be plainly marked "Amended" across face of return)

12-2

5311

EXHIBIT "E" of Stip. Facts.

Form 1150
TREASURY DEPARTMENT
Internal Revenue Service

CORPORATION INCOME TAX RETURN For Calendar Year 1932

File This Return with the Collector of Internal Revenue for Your District on or Before March 31, 1933.

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

GERMANTOWN TRUST COMPANY

GERMANTOWN & CHELSEA AVENUES

GERMANTOWN, PHILA., PA.

(Post Office and State)

File Separately, Except Where Otherwise Provided in the Instructions, That This Form be Completely Filled Out in Respect of any Statement, Schedule, or Report Submitted Herewith.

Date of Incorporation

Association 4/4/20

Under the Laws of what State or Country

The Corporation's Books are in Care of

Located at

Kind of Business

Is This a Consolidated Return of Two or More Corporations?

If so, How Many?

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), \$ 29,309.09; Less Returns and Allowances, \$ 0; Net Sales, \$ 29,309.09

2. Less Cost of Goods Sold:

(a) Inventory at beginning of year

(b) Material or merchandise bought for manufacture or sale

(c) Miscellaneous costs (From Schedule A, Column 1):

(1) Salaries and wages, \$ 2,100.00

(2) Other costs, \$ 0

(d) Total of lines (a), (b), and (c)

(e) Less inventory at end of year

3. Gross Profit from Sales (Item 1 minus Item 2)

4. Gross Receipts (where inventories are not an income-determining factor)

5. Less cost of operations (From Schedule A, Column 2):

(a) Salaries and wages, \$ 2,100.00

(b) Other costs, \$ 0

6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)

7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.

8. Rents

9. Royalties

10. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)

11. Dividends on:

(a) Stock of Domestic Corporations subject to taxation under Title I of Revenue Act of 1932

(b) Stock of Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932

(c) Stock of Foreign Corporations

12. Other Income (State nature of income):

(a)

Page 1 of Return

269

Serial Number

Check Number

Check Number

(Cashier's Stamp)

Cash

Check

M. O.

Cart. of Ind.

First Payment

ATTACH REMITTANCE HERE

A B M. res

9-17-36

X

ATTACH HERE

3. Gross Profit from Sales (Item 1 minus Item 2)									
4. Gross Receipts (where inventories are not an income-determining factor)									
5. Less cost of operations (From Schedule A; Column B)									
(a) Salaries and wages, \$									
(b) Other costs, \$									
Total									
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)									
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.									
8. Rents									
9. Royalties									
10. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule E)									
11. Dividends on:									
(a) Stock of Domestic Corporations subject to taxation under Title I of Revenue Act of 1932									
(b) Stock of Domestic Corporations not subject to taxation under Title I of Revenue Act of 1932									
(c) Stock of Foreign Corporations									
12. Other Income (State nature of income):									
(a)									
(b)									
13. TOTAL INCOME IN ITEMS 3, AND 6 MINUS DEDUCTIONS									
14. Compensation of Officers (From Schedule C)									
15. Rent on Business Property									
16. Repairs (From Schedule D); Salaries and Wages, \$									
Other Costs, \$									
Total									
17. Interest									
18. Taxes (From Schedule E)									
19. Losses (From Schedule F)									
20. Bad Debts (From Schedule G)									
21. Dividends (From Schedule H)									
22. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule D)									
23. Depletion of Mines, Oil and Gas Wells, Lumber, etc. (Submit schedule, see Instruction 20)									
24. Other Deductions Not Reported Above (Explain below, or on separate sheet)									
(a) Salaries and wages. (Not included in Item 2, 5, 14, or 16 above)									
(b)									
(c)									
(d)									
25. TOTAL DEDUCTIONS IN ITEMS 14 TO 24									
26. NET INCOME (Item 13 minus Item 25)									
27. LESS: NET LOSS FOR 1931 (Submit schedule)									
28. NET INCOME FOR TAX COMPUTATION (Item 26 minus Item 27)									

COMPUTATION OF TAX

29. Net Income (Item 28 above)									
30. Income Tax (13 1/2% of Item 29) (or 14% of Item 29, if this is a consolidated return)									
31. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)									
32. Income Tax Paid to a Foreign Country or United States possession by a domestic corporation (See Instruction 30)									
33. Balance of Tax (Item 30 minus Items 31 and 32)									

An amended return must be marked "Amended" at top of return.

Checks and drafts will be accepted only if payable at par.

[fol. 59] UNITED STATES OF AMERICA,
 Eastern District of Pennsylvania,
 Third Judicial Circuit *et.:*

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record and proceedings in this Court; and Exhibit "D" of Stipulation of Facts, exclusive of schedules attached thereto; and Page 1 of Exhibit "E" of Stipulation of Facts, in the case of Commissioner of Internal Revenue, petitioner, vs. Germantown Trust Company, Trustee Germantown Trust Company Bond Investment Fund, respondent, No. 6989, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 20th day of September in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States the one hundred and sixty-fourth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 13, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.